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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/784,855

02/23/2004

James H. Keithly

0876-0178

9428

26568

7590

06/02/2006

EXAMINER

COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD

NGUYEN, TRINH T

SUITE 2850

200 WEST ADAMS STREET

CHICAGO, IL 60606

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/784,855	KEITHLY ET AL.	
	Examiner	Art Unit	
	Trinh T. Nguyen	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Election dated 3/20/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/23/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/1/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 20-33 in the reply filed on 3/20/06 is acknowledged. Even though Applicant states that the election was elected with traverse, the election was actually elected without traverse since Applicant presented no reasons explaining why the restriction requirement is improper. Also, claims 1-19 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

2. Claims 20-33 are objected to because of the following informalities: in claim 20, it is noted that the limitation "the citrus byproduct containing citrus peel and pulp" should be rewritten as ""the citrus byproduct containing citrus peel or pulp" as it is disclosed in [0021] of page 7 of the instant specification. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keithly et al. (US 6523496).

Keithly et al. disclose that it is old and well known to provide a process for enhancing commercial poultry breeder operations comprising: supplying a space having an area at which poultry breeders are fed; providing a breeder poultry feed diet composition comprises a balanced feed composition and a citrus feed supplement (note that Keithly et al.'s citrus byproduct bedding litter can be considered as a breeder poultry feed diet composition wherein the citrus byproduct bedding litter can be eaten by the poultry chicks); and placing the breeder poultry feed diet composition within the area at which poultry breeders are fed.

Keithly et al. do not teach that the citrus feed supplement being at a concentration of not more than about 2 weight percent based on the total weight of the poultry feed diet composition. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Keithly et al.'s process so as to include a citrus feed supplement being at a concentration of not more than about 2 weight percent, since it has been held that where routine testing and general experimental conditions are present, discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Also, since applicant did not provide a reason and/or showing any criticality as to why the citrus feed supplement has to be at a concentration of not more than about 2 weight percent (see page 14 of the instant specification, Applicant only stated that "Typically, the citrus feed supplement is at a level of not greater than about 2 weight percent. Preferably, the feed supplement according to the invention is at a level of not greater than about 1.5 weight percent. An especially

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preferred range is between about 0.2 weight percent and about 1 weight percent"), it is believed that through trial and error during the testing procedure that one of ordinary skill in the art comes up with a desirable citrus feed supplement weight percentage to meet the design criteria for forming a breeder poultry feed diet composition having a balanced feed composition and a citrus feed supplement.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M). The examiner's supervisor, Teri Luu can be reached on (571) 272-7045 for the purpose of status inquiry only. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Trinh T Nguyen
Primary Examiner
Art Unit 3644

5/30/06